

CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 1998-35

Being a By-law regarding a Highway Encroachment.

WHEREAS Section 210(107) of the Municipal Act, R.S.O. 1990 authorizes Council to pass By-laws allowing any person owning any building or other erection that by inadvertence has been wholly or partially erected upon any highway to maintain and use such erection thereof;

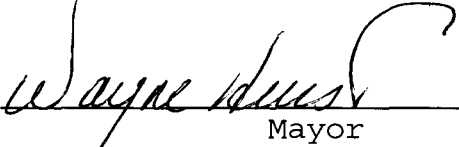
AND WHEREAS Joseph Gazdig and Evelyn Gazdig have applied to the Town of Amherstburg for permission to continue an encroachment of a building into a portion of the road allowance known as Park Ave;

AND WHEREAS Council deems it expedient to authorize and permit the continuation of same as per agreement attached hereto.


**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF
THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

1. That the owners of the property at 1646 Park Ave. be authorized and permitted to encroach upon Park Ave. as described and in accordance with the attached agreement.
2. That the Mayor and Clerk be and they are hereby authorized to sign the subject agreement and affix the Corporate Seal thereto.
3. This By-law shall come into force and effect on the date of the final passing thereof.

Read a first, second and third time and finally passed this 25th day of May, 1998.



Mayor



Clerk

1st Reading: May 25, 1998

2nd Reading: May 25, 1998

3rd Reading: May 25, 1998

ENCROACHMENT AGREEMENT

THIS AGREEMENT made in triplicate the day and year hereinafter written.

BETWEEN:

THE CORPORATION OF TOWN OF AMHERSTBURG
271 Sandwich St. South, P. O. Box 159
Amherstburg, Ontario N9V 2Z3

hereinafter called the "CORPORATION"

OF THE FIRST PART;

- and -

JOSEPH GAZDIG & EVELYN GAZDIG
1646 Park Ave.
Amherstburg, Ontario N9V 1V7

hereinafter called the "LICENSEE"

OF THE SECOND PART;

WHEREAS the Licensee is the registered owner of certain lands and premises in Town of Amherstburg (formerly the Township of Malden), in the County of Essex and Province of Ontario, which lands are described in Schedule "A" annexed hereto and forming part of this Agreement.

AND WHEREAS the Licensee has applied to the Corporation for permission to continue the encroachment of the building extending easterly 13.71 feet into part of the untravelled portion of the road allowance known as Park Avenue, east of Lot 3, Plan 833, hereinafter called the "encroachment", to be used in conjunction with the adjoining lands and premises as described in Schedule "A" attached hereto, which encroachment is more particularly shown on a sketch dated May 26, 1977, and prepared by John B. Smeeton Ontario Inc., Ontario Land Surveyor, which sketch is annexed hereto as Schedule "B" to this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT:

1. The Corporation permits the Licensee to occupy and use that part of the untravelled portion of the road allowance known as Park Avenue, east of Lot 3, Plan 833, for the purpose of the encroachment for a maximum term equal to the respective lives of the encroaching structure.
2. The Licensee covenants and agrees to maintain the said encroachment in good repair at all times and to the satisfaction of the Corporation's Chief Building Official.
3. The Licensee further covenants and agrees to be responsible for all damages suffered and/or costs incurred with respect to the Licensee's building and/or property which may result from the Corporation being required to perform works or repairs with respect to that part of the untravelled portion of the road allowance known as Park Avenue, east of Lot 3, Plan 833, as same may be required from time to time.

4. The Licensee further covenants and agrees to obtain the necessary permits from all pertinent Departments of the Corporation prior to any construction on the said parcel.

5. It is expressly agreed that upon destruction, removal or replacement of the said building now erected upon the Schedule "A" lands, or upon partial destruction or damage to the said building from any cause including the voluntary act of the owner thereof, to the extent of more than sixty percent (60%) of its assessed value, exclusive of its foundations, or upon breach by the Licensee of any of the provisions of this Agreement, the permission hereby granted shall, without any further action or notice and at the sole option of the Corporation, be terminated and at an end and the Corporation may require the Licensee to forthwith remove the said encroachment and restore the lands encroached upon to the satisfaction of the Chief Building Official of the Corporation and upon failure so to do may itself do all things necessary for the removal of the said encroachment and for such purpose may enter upon the Schedule "A" lands and the expense of such removal, restoration and entry shall be paid by the Licensee forthwith upon demand and payment of such expense may be enforced in the same manner as payment of taxes for the current year upon the Schedule "A" lands and/or building.

6. The Licensee further covenants and agrees to pay to the Corporation and/or Ontario Hydro any additional municipal realty taxes or other rates and charges, if any, levied or imposed on or in respect of the said part of the untravelled portion of the road allowance known as Park Avenue, east of Lot 3, Plan 833, as encroached upon or over by the said encroachment.

7. The Licensee further covenants and agrees to assume the responsibility and to pay for any additional costs or charges which the Corporation, Ontario Hydro, Union Gas Limited or Bell Canada may incur in the future installation or relocation of their services or utility plants by reason of such encroachment and the payment of such costs may be enforced in the same manner provided in paragraph 5 of this Agreement.

8. It is further understood and agreed by and between the parties hereto that if the said part of the untravelled portion of the road allowance known as Park Avenue, east of Lot 3, Plan 833, as encroached upon, is required by the Corporation for its purposes, the Licensee shall remove the said encroachment and restore the said unopened road allowance to the condition of the surrounding area at its own expense on ninety (90) days written notice from the Corporation so to do; provided that if the Licensee fails to remove the said encroachment and restore as aforesaid, the Corporation may enter upon the said lands and premises of the Licensee and remove the said encroachment and restore the lands encroached upon and the expense of such removal and restoration shall be paid by the Licensee forthwith on demand, or at the option of the Corporation the payment of such expense may be enforced in the same manner provided in paragraph 5 of this Agreement.

9. It is further understood and agreed by and between the parties hereto that if the Corporation at any time exercises its power or right to terminate this Agreement or demand the removal of the encroachment or revoke the permission granted herein, the Corporation shall not be liable to pay any compensation for any loss, costs or damages which may be incurred by the Licensee or any person claiming under the Licensee by reason of such termination, demand or revocation.

10. The Licensee further covenants and agrees to indemnify and save harmless the Corporation from and against all loss, costs or damages which it may suffer or be put to and from and against all claims or actions which may be made or brought against the Corporation by reason of said encroachment, its construction, existence, repair or maintenance or resulting therefrom in any way whatsoever, unless such loss, costs, damages, claims or actions arise due to the negligence of the Corporation, or the Corporation's officers, agents or employees.

11. The Licensee further covenants and agrees to provide and maintain public liability and property damage insurance in a form (containing endorsements naming the Corporation as an additional named insured and providing a cross-liability/separation of insureds clause) in the amount of at least TWO MILLION DOLLARS (\$2,000,000.00) and satisfactory in form and content (including policy limit) to the Corporation and a true copy of the said insurance policy shall be filed with the Clerk of the Corporation. The Licensee acknowledges and agrees that such policy limit amount may have to be increased from time to time during the term hereof to take into account inflationary pressures and relevant judicial awards.

12. It is further understood and agreed by and between the parties hereto that by the execution of these presents, the Licensee does hereby expressly and completely release the Corporation from any and all liabilities, suits, claims and demands (whether for property damage or for personal injury or death and whether founded in tort, contract or quasi-contract) which at any time might be exerted by the Licensee arising out of the existence of the encroachment in the untravelled portion of the road allowance known as Park Avenue, east of Lot 3, Plan 833, or out of any act or omission of the Corporation, unless the liability, suit, claim or demand arises due to the negligence of the Corporation or the Corporation's officers, agents or employees.

13. It is further understood and agreed by and between the parties hereto that if the Licensee sells the said lands described in Schedule "A" hereto annexed, the Licensee shall give notice to the Corporation of such sale within ten (10) days of the completion thereof.

14. It is further understood and agreed by and between the parties hereto that all notices, demands and requests which may be or are required to be given under the provisions of this Agreement by either party to the other herein, shall be in writing and may be mailed or delivered and shall be addressed in the case of the Licensee to the Licensee at 1646 Park Avenue, Amherstburg, Ontario N9V 1V7, and in the case of the Corporation, to the Clerk of the Corporation at 271 Sandwich St. South, P.O. Box 159, Amherstburg, Ontario N9V 2Z3, or to such other address either party may from time to time designate by written notice to the other party.

15. It is further understood and agreed by and between the parties hereto that notwithstanding anything hereinbefore or hereinafter contained and further notwithstanding the execution of this Agreement, this Agreement shall not go into force or have any effect unless and until the within Agreement has been registered by and at the expense of the Licensee at the Registry Office for the Land Registry Division of Essex (No. 12) and a registered copy thereof delivered to the Clerk of the Corporation.

16. It is further understood and agreed between the parties hereto that this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns, it being acknowledged that in the event of the Licensee selling, conveying, transferring or entering into an agreement for sale or of transfer of any title to or interest in part or all of the Schedule "A" lands to a purchaser or transferee not approved of in writing by the Corporation (which approval may not be unreasonably withheld by the Corporation), the Corporation may forthwith terminate this Agreement or demand the immediate removal of the encroachment or forthwith revoke the permission granted for the encroachment, and may enter upon the Schedule "A" lands in whole or in part and remove the said encroachment and restore the lands encroached upon and the expense of such removal and restoration shall be paid by the Licensee or by such unapproved purchaser or transferee forthwith on demand or, at the Corporation's option, the payment of such expense may be enforced in the same manner as realty taxes payable in respect of the Schedule "A" lands; and the Corporation shall not be liable to pay any compensation for any loss, costs or damages which may be incurred by the Licensee or by such unapproved purchaser or transferee by reason of such termination, demand, revocation, entry, removal or restoration. **PROVIDED HOWEVER**, that notwithstanding the foregoing, the permission to encroach and this Agreement shall be assignable to and assumable by a bona fide mortgagee or chargee of the Schedule "A" lands.

THE PARTIES HERETO have executed the within Agreement this
day of _____, 1998.

SIGNED, SEALED AND DELIVERED)
in the presence of:)

) THE CORPORATION OF THE TOWN OF
) AMHERSTBURG

)
) Per: Wayne Hurst
) Wayne Hurst, Mayor

)
) Per: David Mailloux
) David Mailloux, Clerk

)
) Joseph Gazdig
) Joseph Gazdig

)
) Evelyn Gazdig
) Evelyn Gazdig

SCHEDULE "A"

Lot 3, Registered Plan 833, Town of Amherstburg (formerly Township of Malden),
County of Essex and Province of Ontario

